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Sentencing

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

S4 15 Cr. 867 (RMB)

5 MEHMET HAKAN ATILLA,

6 Defendant.

7 -----x

8
9 May 16, 2018
10 10:15 a.m.

11
12 Before:

13 HON. RICHARD M. BERMAN,

14 District
15 Judge

16
17 APPEARANCES

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Southern District of New York

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MS. ASIYE KAY, Turkish Interpreter

MS. SEYHAN SIRTALAN, Turkish Interpreter

1 (In open court)

2 THE COURT: Good morning, everybody.

3 So, we have a lot of ground to cover, and this may
4 take a while. I'm anticipating probably more than an hour,
5 maybe two. We'll see.

6 So let me start by welcoming you all here and
7 mentioning at the outset that this is something of an
8 exceptional sentencing proceeding in the sense, among others,
9 that in addition to U.S. citizens who generally follow our
10 cases, there no doubt are large number of Turkish citizens who
11 are also very interested in and are following these
12 proceedings.

13 So for that reason, that is to say, the Americans who
14 are interested and the Turkish people, and others, who may be
15 interested, I'm planning to arrange that a copy of the
16 transcript of today's proceeding, verbatim and without edits,
17 will be made publicly available as soon as possible, and
18 hopefully some time today, on the internet. The idea is so
19 that everyone will know exactly what was said here, and so that
20 everybody can evaluate the outcome for themselves.

21 We also have certified Turkish language interpreters
22 who will interpret these proceedings and everything that is
23 said here.

24 I don't intend to summarize the details of this case
25 at this proceeding, but I refer to and incorporate by

1 reference, first, the full written transcript of Mr. Atilla's
2 trial, and second, all of the relevant prior court rulings,
3 including, without limitation, the Court's Rule 29(a) decision
4 and order dated February 7, 2018, which provides a good summary
5 with many of the key issues in this case.

6 That decision and order describes, for example,
7 meetings that Mr. Atilla held with others on behalf of the
8 Turkish state-owned bank, Halkbank, with senior U.S. officials
9 in Washington, D.C., and in Turkey, concerning the United
10 States sanctions against Iran. And that includes with U.S.
11 officials, Former U.S. Undersecretary of the Treasury for
12 Terrorism and Financial Intelligence David Cohen, who testified
13 in the case about his interactions with Mr. Atilla and
14 Halkbank, and former Director of the Office of Foreign Assets
15 Control Mr. Adam Szubin, who testified that Mr. Atilla was the
16 principal representative of Halkbank with whom he interacted.

17 And in fact, during the trial, the following questions
18 and answers between defense counsel and Mr. Cohen on
19 cross-examination occurred. Defense counsel Mr. Rocco asked:
20 "Q. And how about in your" -- meaning David Cohen's --
21 "conversations with Halkbank, did you tell Halkbank, ever, that
22 sanctionable activities was unlawful or illegal or criminal?"

23 And Cohen responds, "Yes."

24 And then some lines below, Mr. Cohen says, "As I
25 testified just a moment ago, part of my standard presentation

1 on U.S. sanctions programs was that IEEPA-based sanctions,
2 which includes Executive Order 13622, that the violation of
3 IEEPA-based sanctions can expose the violater to sanctions or
4 potentially criminal prosecution."

5 Cohen had in the trial testified about Mr. Atilla's
6 extensive knowledge of the U.S. sanctions regulations.

7 In sentencing a defendant, which is what we're about
8 today, following the U.S. Supreme Court decisions in Gall v.
9 United States, Kimbrough v. United States, and United States v.
10 Booker, and following the Second Circuit decisions in United
11 States v. Crosby, and United States v. Regalado, we recognize
12 the following sentencing principles:

13 First, that the United States sentencing guidelines
14 are no longer mandatory; and second, that the Court must, and
15 in this case I have to great length, even before taking the
16 bench today, considered the United States sentencing guidelines
17 and all the other factors mentioned in 18, United States Code,
18 Section 3553(a), which include the following:

19 The nature and the circumstances of the offenses and
20 the history and characteristics of the defendant. And as you
21 will see, these two factors are, to me, especially important in
22 this case.

23 The factors also include the need for the sentence
24 imposed to accomplish certain objectives, which include
25 reflecting the seriousness of the offense, promoting respect

1 for the law, and providing a just punishment for the offense.
2 And these three additional factors are also important in my
3 consideration and deliberation.

4 Also, the 3553(a) factors include the obligation to
5 afford adequate deterrence to future criminal conduct, to
6 protect the public from further crimes, to provide the
7 defendant with any needed medical care, educational or
8 vocational training or other correctional treatment in the most
9 effective manner. And these factors are also of significance.

10 We also look at the kinds of sentences that are
11 available, the kinds of sentence and the sentencing range
12 established under the United States sentencing guidelines, even
13 though, as I say, they are no longer mandatory.

14 I do have a chart which in a minute or so we'll hand
15 out, it might make things easier for you, which reflects each
16 party's evaluation of the United States sentencing guidelines
17 and how they apply in this case. And you'll see there is a
18 very, very wide disagreement or disparity in the
19 interpretations of the guidelines.

20 We also look at any applicable policy statements that
21 may have been issued by the United States sentencing
22 commission, we seek to avoid unwarranted sentence disparities
23 among similarly situated defendants, and, in appropriate cases,
24 to provide for restitution.

25 We always begin our sentencing analysis with a

1 sometimes unavoidably lengthy and technical United States
2 sentencing guidelines calculation. Even though, as I said
3 before, the United States sentencing guidelines are no longer
4 mandatory.

5 But I'll give you all a heads up at this very early
6 point in the sentencing, which is that, while I certainly will
7 discuss the sentencing guidelines in detail and at some length,
8 as I'm required to do, my thinking is not to impose a guideline
9 sentence in this case, and to impose a sentence which is
10 appropriately lenient.

11 So let me pause for a moment and hand out, Christine
12 will hand out a copy of this chart. It may help you follow the
13 discussion.

14 So preliminarily, again, I'm going to advise you that
15 there is wide disagreement among the various parties as to the
16 appropriate sentencing guidelines. You may already be aware of
17 that. And if you look at this chart, among other things,
18 you'll see that the U.S. probation department has determined
19 the applicable guideline range in this case to be life
20 imprisonment. It couldn't in any event be that, because the
21 maximum possible sentence here is 105 years, which is in effect
22 a life sentence. They've concluded that the offense level is
23 46, and what we call the criminal history category is I.

24 And by contrast, for example, the defense has
25 determined that the applicable guideline range in this case is

1 46 to 57 months of incarceration, based on an offense level of
2 23, and a criminal history category of I.

3 The government has determined that the applicable
4 guideline range in this case also to be life imprisonment,
5 noting that the maximum possible sentence is 105 years, based
6 on an offense level of 54, and a criminal history category of
7 I.

8 The government has also provided an alternative
9 calculation of the applicable guidelines range, which is 168 to
10 210 months, based on an offense level of 35, and a criminal
11 history category of I.

12 I should say here before I go further and start
13 talking about my own guidelines calculations, that I am
14 rejecting the idea completely that a life sentence for
15 Mr. Atilla would be appropriate, fair, or reasonable, or even
16 that 105 years would be an appropriate, fair, and reasonable
17 sentence, and I hope that will become clear as the discussion
18 proceeds.

19 So, I've determined that the applicable sentencing
20 guideline range in this case would be 97 to 121 months based on
21 an offense level of 30 and a criminal history category of I.
22 And I remind you again that even though I'm going to spend a
23 lot of time on these guidelines calculations, as I said at the
24 outset, I do not intend to impose a guidelines sentence.

25 So I calculated the offense level as follows: I

1 started with a base offense level under 2S1.1(a)(1), and it is
2 in my opinion 26. And I'll note that the defense and the
3 government's alternative calculation agree that this is an
4 appropriate starting point base offense level.

5 I then gave what is called an enhancement, two-level
6 enhancement due to conviction under 18 U.S.C. Section 1956.
7 All parties agree that this enhancement is appropriate. It is
8 a plus two enhancement pursuant to United States sentencing
9 guidelines section 2S1.1(b)(2)(B).

10 Then I gave another two-level enhancement for what's
11 called sophisticated money laundering under United States
12 sentencing guidelines 2S1.1(b)(3). Probation and the
13 government agree with this enhancement.

14 And then I added plus two for what's called
15 obstruction of justice pursuant to United States sentencing
16 guidelines section 3C1.1. As to this, the government agrees
17 with the enhancement, I think the probation department said
18 that whether there was an enhancement here or not was in the
19 Court's discretion.

20 I subtracted what's called a two-level enhancement,
21 two-level reduction for minor role under United States
22 sentencing guidelines section 3B1.2(b). And the defense agrees
23 with this reduction.

24 So I came up with what we call an adjusted offense
25 level of 30, and that yields a guidelines range of 97 to 121

1 months.

2 I'll note that the starting point for my calculation,
3 that is to say United States sentencing guidelines 2S1.1(a)(1),
4 is in accord with the starting point of the probation
5 department, the defense, and also the government's alternative
6 calculation.

7 So you can see, though, from the chart and from what
8 I've said, that the parties diverge dramatically as to whether
9 or which enhancements or reductions to or from the base offense
10 level should be applied to reach the adjusted offense level.

11 In my determination of the adjusted offense level, I
12 rejected the reduction proposed by the defense related to
13 conspiracy under United States sentencing guidelines 2X1.1. I
14 did not feel that this reduction applied, because the
15 guidelines say that a reduction is warranted only if the
16 defendant or a co-conspirator did not complete all the acts for
17 the successful completion of the substantive offense or
18 offenses.

19 The Court is agreeing with the defense that under U.S.
20 sentencing guidelines 3B1.2, Mr. Atilla qualifies for a minor
21 role reduction. This reduction is warranted because his role
22 in the offenses, as will be discussed in more detail to follow,
23 while important to the success of the conspiracies or schemes,
24 he appears in my judgment to have been substantially less
25 culpable than the -- they used the word "average," I'll use the

1 word "other participants" in the criminal activity.

2 This, of course, is difficult to assess in this case,
3 since only Mr. Zarrab's case has been adjudicated. Mr. Atilla
4 appears less culpable, certainly than Zarrab, and Mr. Atilla
5 appears to have been following orders in large measure from his
6 boss, Mr. Aslan, who was the general manager of Halkbank at the
7 relevant times.

8 What we call application note three states in part:
9 "The fact that a defendant performs an essential or
10 indispensable role in the criminal activity is not
11 determinative. Such a defendant may receive an adjustment
12 under this guideline if he or she is substantially less
13 culpable than the average participant in the criminal
14 activity."

15 Mr. Atilla in my judgment was less culpable. Indeed,
16 at one point in the testimony, Mr. Zarrab said that Mr. Atilla
17 had thrown a wrench into the deal, and he also stated he,
18 Mr. Zarrab, that in one context, that Mr. Atilla was not open
19 to the idea that they were discussing. I'll get into that
20 more.

21 I'm also rejecting the managerial supervisory
22 enhancement under United States sentencing guidelines 3B1.1(b)
23 proposed by the government, as Mr. Atilla's role in these
24 offenses did not rise to the level of a manager or supervisor
25 of the fraudulent scheme. He, Mr. Atilla, was deputy manager

1 and a senior executive of Halkbank, but that is not the same
2 thing.

3 And Halkbank, by the way, I've mentioned a couple of
4 times, it should be noted clearly was not named as a defendant
5 in this case.

6 I think it's important that I explain that obstruction
7 enhancement in a little more detail.

8 In determining that the obstruction or impeding of
9 justice enhancement is required under United States sentencing
10 guidelines 3C1.1, the Court finds that Mr. Atilla gave some
11 false testimony under oath at trial, and I'm guided by the
12 following guidelines provisions.

13 The provision is if the defendant willfully obstructed
14 or impeded or attempted to obstruct or impede the
15 administration of justice with respect to the investigation,
16 prosecution, or sentencing of the instant offense of
17 conviction, and (b) the obstructive conduct related to the
18 defendant's offense of conviction and any relevant conduct, or
19 a closely related offense, then the Court is instructed to
20 increase the offense level by two levels. Which I've done.

21 What we call application note four provides examples.
22 And one of them is providing materially false information to a
23 judge or magistrate. Another one defines "material evidence"
24 as evidence, fact, statement or information that, if believed,
25 would tend to influence or affect the issue under

1 determination.

2 According to Second Circuit case law, where a
3 defendant lies under oath, the application of a sentence
4 enhancement is mandatory.

5 Based on the following examples of Mr. Atilla's what I
6 believe was materially false testimony at the trial, I do find
7 that there is a willful obstruction and that the enhancement is
8 warranted.

9 So here's the first example. It has to do with what's
10 called a private meeting or referred to in the testimony as a
11 pull-aside. It is discussed in the transcripts of the trial
12 dated December 12, December 18, 2017, and also December 19,
13 2017. And there you'll find Adam Szubin, who, as I said
14 before, is the former Director of the U.S. Treasury
15 Department's Office of Foreign Assets Control, he testified,
16 and I believe credibly, at trial that he had what's called a
17 pull-aside for a one-on-one meeting with Mr. Atilla, in which
18 he told Mr. Atilla that to the extent that Mr. Atilla was
19 viewing this, that is to say, the discussion between Szubin and
20 Atilla on that occasion, to the extent he was viewing that as a
21 kind of routine discussion or routine visit to the U.S.
22 Treasury Department, that U.S. Treasury Department officials
23 were making across the globe, that was not the case. Szubin
24 said that his trip to Turkey -- this was a meeting in Turkey --
25 was a very conscious effort to visit Halkbank by Mr. Szubin,

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1 because of concerns that were pretty serious about what was
2 going on at Halkbank.

3 And that Mr. Szubin said, "We viewed them in a sort of
4 category unto themselves, that I wasn't having this same level
5 of conversation with any other bank around the world at that
6 time. To in a sense underscore how serious this was," and this
7 is Mr. Szubin talking, "to make sure that he," Mr. Atilla, "was
8 not in doubt."

9 Mr. Szubin also testified that Mr. Atilla was the
10 principal representative of Halkbank with whom he regularly
11 communicated.

12 So the question was posed now to Mr. Atilla:
13 "Q. Do you remember Mr. Szubin testifying about meeting you on
14 February 12, 2013?

15 "A. Yes, I do remember.

16 "Q. And among other things, he said that he had a private
17 pull-aside with you. Do you remember him testifying to a
18 private pull-aside?

19 "A. Such a thing did not happen."

20 The next question was that I'm repeating:

21 "Q. It was at that meeting that Adam Szubin pulled you aside
22 for a private conversation; isn't that right?

23 "A. No, I do not remember such a thing."

24 This was followed a little bit later by this question:

25 "Q. It is your sworn testimony that you never had a private

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1 meeting with Adam Szubin on February 12, 2013?

2 "A. I'm saying this independent of any date. There was never
3 any such private conversation or a meeting between me and the
4 individual where he pulled me aside and warned me about
5 something. That never happened on any date.

6 "Q. It never happened?

7 "A. That is correct. It never happened."

8 A second example that I relied upon was related to
9 what's called the fake food system. The background here is
10 that Mr. Zarrab testified, and I believe credibly, about
11 discussing with Mr. Atilla and with Suleyman Aslan, Halkbank's
12 general manager and Mr. Atilla's boss, about a discussion or
13 discussions of a scheme or system for getting or unblocking
14 Iranian money or proceeds that were at Halkbank. And it is
15 during this conversation that that arrangement was more or less
16 finalized.

17 Mr. Zarrab stated: "the meeting that was held between
18 me, Mr. Suleyman and Mr. Hakan, in that meeting we finalized
19 this final version of how this method," and now this is me
20 adding, presumably referring to a method of unblocking Iranian
21 proceeds, "would work, and how the system would be
22 implemented."

23 So the question was asked:

24 "Q. After you came back, were you in any meetings with
25 Mr. Zarrab in which you discussed with him that there was any

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1 fake food system?"

2 Which is to say pretending, but not actually sending
3 food to Iran, in an effort to defeat the U.S. sanctions against
4 Iran.

5 And the answer from Mr. Atilla was:

6 "A. Not after I came, not ever, did I talk about such a topic
7 with Zarrab."

8 Mr. Zarrab also testified, again, I think credibly,
9 that the idea of transferring money from a company called
10 Volgam to Centrica, those are two companies controlled by
11 Mr. Zarrab within Halkbank, came from Mr. Atilla.

12 And in the transcript, this is December 18, 2017, the
13 question was posed:

14 "Q. Did you ever have a meeting with Mr. Zarrab in which the
15 idea of transferring the money from Volgam to Centrica within
16 Halkbank was from you?"

17 The answer from Mr. Atilla was: "No, we haven't."

18 Followed by a question:

19 "Q. Do you recall that he, Mr. Zarrab, said you asked whether
20 he could supply bills of lading, because it was difficult to
21 trace whether shipments actually occurred or not from bills of
22 lading?

23 "A. We talked about bills of lading, but we didn't discuss the
24 traceability of bills of lading."

25 So that's a second example in my opinion.

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1 A third -- I'm using these categories, by the way.
2 These are my usage. The third is called fake documentation.
3 This regards documents that reflected that wheat was exported
4 from Dubai and also reflected that ships that were to be
5 utilized were too small capacity-wise to carry the purported
6 cargo loads to Iran.

7 And in this instance, this third instance, Mr. Zarrab
8 testified, I believe credibly, that Mr. Atilla advised him on
9 the phone to be careful about the documentation regarding trade
10 with Iran that was submitted to Halkbank. And that
11 Mr. Suleyman Aslan had advised Mr. Zarrab that Mr. Atilla would
12 be calling him to suggest changes to documents that were
13 submitted to Halkbank, because that documentation reflected
14 incorrect products and incompatibility between the quantity of
15 goods allegedly shipped, and the capacity of the ships to
16 handle those quantities.

17 I'm now discussing the December 4, 2017 transcript.
18 Mr. Zarrab also testified that there was never any actual food
19 sent to Iran.

20 On December 18, 2017, this question was posed perhaps
21 by Ms. Fleming, I'm not sure, to Mr. Atilla:

22 "Q. Are you telling Mr. Zarrab in this call how to do fake
23 documentation?

24 "A. Never.

25 "Q. Are you telling him, Mr. Zarrab, how to fix documentation

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1 so you can help him with a fake food scheme?

2 "A. No. Absolutely not."

3 Mr. Atilla goes on to say in this answer: "Here I'm
4 talking about examples. I'm giving examples about possible
5 transactions. It's not the actual transactions. Actually,
6 this conversation took place after his questions, and then he
7 asked if they should look at the bigger vessels. I said look
8 at both small vessels and big vessels. I'm giving examples
9 here because of their submissions of the documents, what was
10 showing big and small vessels, so I was just giving examples
11 for the tonnage. The documents that they gave was their
12 submissions. That was their submissions." I assume that
13 refers to Mr. Zarrab. "Declarations, they were declarations,
14 that's why I asked them to control their declarations."

15 A final example that I will give you relates to
16 Mr. Atilla's contribution to the Iran sanctions avoidance
17 scheme. Mr. Zarrab testified credibly that Mr. Atilla was very
18 knowledgeable about the sanctions against Iran, and the
19 Halkbank processes and procedures, and that Mr. Atilla made
20 contributions in the form of suggested approaches to make the
21 sanctions avoidance scheme appear that it was not violating the
22 American sanctions.

23 On November 29, 2017, the transcript says the
24 following. Mr. Zarrab stated:

25 "A. What I'm saying is at the beginning of the food trade,

1 where the method and the system was developed at Halkbank,
2 Mr. Hakan Atilla had his contributions into that."

3 Then on December 6, 2017, Mr. Zarrab also testified
4 that he discussed with Mr. Aslan the methods used which
5 Mr. Atilla had provided guidance in and made additions to.

6 The question posed again by Ms. Fleming to Mr. Atilla
7 and the answer Mr. Atilla gave was:

8 "Q. I'm 47 years old, and up until this point throughout my
9 life, I have never been in a meeting or anywhere where
10 violating the sanctions against Iran was discussed, and anybody
11 pointed to Reza Zarrab or that I pointed to Reza Zarrab, and
12 there was never any point where I had reached an agreement with
13 Mr. Zarrab about anything about these things."

14 So those I raise by way of example to support the
15 two-level enhancement. By the way, if the two-level
16 enhancement were not given, in my opinion, the sentencing
17 guideline range would drop to 78 to 97 months of incarceration.

18 So notwithstanding the fact that we've spent now
19 considerable time this morning on the sentencing guidelines
20 calculations, which I'm required to do at sentencing, as I said
21 before, it is not my intention to impose a guideline sentence
22 in Mr. Atilla's case.

23 And although I've considered each of the various
24 parties' proposed guidelines calculations, as is clear, I also
25 do not agree with the guidelines range calculations of I think

1 anybody -- probation, government or the defense. I do believe
2 that, as I said before, a lenient non-guideline sentence is
3 called for in this case for reasons which I'll turn to.

4 That is after a careful review of all of the 18,
5 United States Code, Section 3553(a) factors. I think that
6 evaluation clearly supports a non-guidelines sentence and says
7 that a non-guideline sentence is appropriate in this case.

8 For one thing, a guideline sentence, including
9 particularly those proposed by the probation department and the
10 government in its first calculation, that appears to be based
11 in significant measure on the multimillion dollar value or
12 amounts of goods involved in the transactions which I've been
13 discussing which are at the core of the Iran sanctions
14 avoidance scheme.

15 Such a sentence would be excessively punitive in my
16 opinion, and therefore, inappropriate, unreasonable, and
17 unfair.

18 There is a case called United States v. Adelson in the
19 District Court, the decision was written by Judge Rakoff and it
20 was affirmed on appeal. It's become clear to me in this case
21 that that reasoning would apply throughout.

22 Mr. Atilla was, as the defense suggests, somewhat of a
23 cog in the wheel, and I would add at times a reluctant one at
24 that. Or, perhaps better stated, as a person following orders
25 in these sanctions evasion schemes. I do not believe that he

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1 was a manager or a supervisor or a mastermind of the criminal
2 enterprises.

3 And notwithstanding the fact that Mr. Atilla
4 unquestionably furthered the Iranian sanctions evasion
5 conspiracies, and that he was found guilty by a jury of five of
6 six counts in the indictment, including four conspiracies, on
7 or about January 3, 2018, Mr. Atilla was, in my opinion, at
8 times a reluctant participant. And indeed, Mr. Zarrab said at
9 one point that Mr. Atilla, as I mentioned before, threw a
10 wrench in the deal. And I'm going to come back to this in a
11 little while.

12 So I intend, in sentencing Mr. Atilla, to place more
13 significance and greater emphasis and reliance upon the Section
14 3553(a) sentencing factors other than only relying on the
15 sentencing guidelines factors in the circumstances presented
16 here. And they include, among others, the nature of the
17 offense and the history and characteristics of Mr. Atilla, as
18 well as, as I said before, the need for the sentence imposed to
19 reflect the seriousness of the defendant's conduct, to promote
20 respect for the law, to provide a just punishment, to afford
21 adequate deterrence, to protect the public from further crimes.
22 I've considered also avoiding sentence disparities, the kinds
23 of sentences available, in order to come up with a sentence
24 that I feel is sufficient, but not greater than necessary.

25 And the sentence I impose is intended to comport with

1 both federal law and with principles of fundamental fairness.
2 It has been said in our courts that while a District Court must
3 consider each 3553(a) factor in imposing sentence, the weight
4 given to any single factor is a matter firmly committed to the
5 discretion of the sentencing judge. That's from a case called
6 United States v. Ciappetta, a Second Circuit decision from
7 2008.

8 It's also been said that district judges have an
9 obligation to consider whether a sentence other than a
10 guideline sentence would be sufficient, but not greater than
11 necessary, to serve the purposes of sentencing. Accordingly,
12 district judges have an obligation to consider whether to
13 depart from the guidelines sentencing range or to impose a
14 non-guideline sentence in every case.

15 That comes from a case called United States v. Corsey,
16 a Second Circuit decision from 2013.

17 And third, while in this category, before I turn to
18 the specific other factors under 3553(a), even if I did agree
19 with probation and the government guidelines ranges, that is to
20 say a base level of seven plus a 30-level enhancement for loss
21 amount, which I don't agree with, as I mentioned before, but
22 even if I did, I would nevertheless find that a downward
23 variance, that is to say a non-guideline sentence, would be
24 appropriate.

25 In the case called United States v. Algahaim, Second

1 Circuit decision from 2016, where the Court stated: "Where the
2 sentencing commission has assigned a rather low base offense
3 level to a crime, and then increased it significantly by what
4 is called a loss enhancement, that combination of circumstances
5 entitles a sentencing judge to consider non-guidelines
6 factors."

7 I refer you also to U.S. v. Johnson, 2018 W.L., it is
8 an Eastern District of New York case, dated April 27, 2018,
9 where the Court said, "I take seriously my responsibility under
10 the Supreme Court and Second Circuit precedent to determine an
11 independently reasonable sentence based on an individualized
12 application of the statutory factors in 3553(a). Where
13 application of the loss enhancement leads to a patently" --
14 this is the judge from the Eastern District talking -- "a
15 patently absurd sentence, it is appropriate for the Court to
16 rely more heavily on the 3553(a) factors."

17 So, considering all those factors, here's what stands
18 out: First, under the nature and circumstances of the offense
19 or offenses, extensive litigation, including the written
20 submissions of the parties and extensive motion practice in
21 this case, the evidence presented at trial, and the jury
22 verdict, all reflect that this is a serious case. The jury
23 found, as I mentioned, four conspiracies, convicted Mr. Atilla
24 of participating in four conspiracies, which in fact overlap,
25 and one substantive crime of bank fraud. The very first

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1 conspiracy charged in the indictment, and for which was one of
2 those that Mr. Atilla was found guilty by the jury, was a
3 conspiracy to defraud the United States and so-called Klein
4 conspiracy.

5 In this connection, Mr. Cohen testified credibly that
6 Mr. Atilla told Mr. Cohen that Halkbank had a banking
7 relationship with Mr. Zarrab, and that it was a relatively
8 small relationship, but that it was ongoing.

9 (Continued on next page)

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1 THE COURT: (Continuing)

2 Mr. Cohen testified that Mr. Atilla assured us, the
3 treasury officials, that there was nothing to be concerned
4 about, presumably referring to Halkbank's dealings with
5 Mr. Zarrab. There are other submissions that discuss this, but
6 I will skip over those.

7 While the crimes that were committed were serious, the
8 crimes of conviction do not involve crimes of violence or drugs
9 or terrorism, etc., crimes which sometimes do warrant very
10 stiff sentences, including sometimes life sentences such as
11 those suggested by the probation department and proposed by the
12 government in its primary and, I would suggest, alternate
13 sentencing proposals.

14 The probation department's and the government's first
15 proposed guidelines range are driven, it appears, in
16 substantial part by the huge amounts of money involved and
17 filtered through Halkbank through Zarrab companies and their
18 related Halkbank accounts.

19 In other words, one principal reason that the
20 government's primary and probation's only guidelines ranges are
21 life imprisonment is they are based upon very substantial
22 financial transactions in the hundreds of millions of dollars
23 and include a low base offense level of 7 or 8, which is
24 increased by 30 levels due to loss amount of more than \$550
25 million.

1 It has been said that it is obvious that sentencing is
2 the most sensitive and difficult task that a judge is called
3 upon to undertake. Where the sentencing guidelines provide
4 reasonable guidance, they are of considerable help to a judge
5 in fashioning a sentence that is fair, just, and reasonable.
6 But where the calculations under the guidelines are excessive
7 on their face, a Court is forced to place greater reliance on
8 the other considerations set forth in 3553(a) as carefully
9 applied to the particular circumstances of the case and to the
10 particular defendant. The cite is *United States v. Adelson*.
11 That is the case I mentioned before.

12 In affirming Judge Rakoff in that case, the Second
13 Circuit said that, after carefully considering those factors,
14 the district court sentenced in that case Mr. Adelson to a
15 sentence substantially below the applicable guideline range of
16 life in prison. The record demonstrates that the district
17 court's decision to impose a below-guidelines sentence was not
18 a failure or refusal to recognize the guidelines, but rather a
19 carefully considered reliance on the Section 3553(a) factors.

20 So that's the approach I'm taking here, although as
21 noted above I did not in fact agree with the probation or the
22 government's calculations in the first place, or the
23 defendant's for that matter.

24 The 3553(a) factors, apart from various guideline
25 ranges, clearly point to a significantly below guidelines

1 sentence. Mr. Atilla, as I've said now several times, was a
2 reluctant participant and one who was following orders, albeit
3 improper orders in my judgment.

4 Approximately one month before Mr. Atilla's trial
5 began, Mr. Reza Zarrab, a Turkish Iranian gold trader, pled
6 guilty to each of the six counts which were also brought
7 against Mr. Atilla. Mr. Zarrab agreed to cooperate with the
8 government, and in fact was one of the government's most
9 important witnesses in Mr. Atilla's trial.

10 The Court -- based upon, among other things, the
11 witness testimony at trial, corroborating evidence presented at
12 trial, and the jury verdict and my own observations for that
13 matter -- believed that Zarrab's testimony was credible, and it
14 was largely unrefuted.

15 During his plea allocution on October 26, 2017,
16 Mr. Zarrab summarized the various schemes or conspiracies
17 involved here and the substantive counts, and he at trial did
18 so by use of detailed diagramming, which he in fact made in the
19 courtroom and by which he and others were able to transfer or
20 free up millions upon millions of dollars of Iranian proceeds,
21 primarily from the sale of Iranian oil. These proceeds were
22 held at Halkbank among numerous accounts, although they were
23 also blocked by the U.S. sanctions.

24 One end result of a series of intra, that is to say
25 within-Halkbank transfers was that the funds in furtherance of

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1 the schemes or conspiracies became unblocked and were then used
2 to fund international payment obligations on behalf of Iran,
3 thus avoiding the sanctions upon trade in Iranian products that
4 was applicable.

5 Mr. Zarrab also credibly explained Mr. Atilla's
6 involvement, sometimes commenting himself, Mr. Zarrab, upon
7 Mr. Atilla's reluctance to be involved in the sanctions-evasion
8 scheme.

9 The witness that was called named Douglas Sloan of
10 Deutsche Bank explained credibly at the trial that the Iranian
11 economy is primarily petroleum based. The petroleum industry
12 is predominantly U.S.-dollar based, and in order for the
13 Iranian economy to function, it therefore must conduct a lot of
14 its business in U.S. dollars. That's in the December 12, 2017,
15 transcript.

16 The charged conspiracies involved not only Mr. Zarrab
17 and Mr. Atilla, but very importantly, they also involved
18 Mr. Atilla's superior, Mr. Suleyman Aslan. At the time he was
19 the general manager of Halkbank, and it appears that Mr. Aslan,
20 not Mr. Atilla, called the shots, clearly.

21 The unrefuted evidence also shows that there were
22 other conspirators far more significant than Mr. Atilla
23 overall, including high Turkish government officials, and among
24 them a former economy minister of turkey named Zafer Caglayan.
25 And the testimony showed that substantial bribes were made by

1 Mr. Zarrab to facilitate the sanctions-evasion conspiracy or
2 schemes to Mr. Aslan and to Mr. Caglayan and perhaps others,
3 but it also showed that Mr. Atilla neither received nor
4 solicited any bribes. And it also shows, as I mentioned, that
5 Halkbank was not charged as a defendant in this case.

6 So Iran was the chief beneficiary of the conspiracies
7 because it was able to evade U.S. sanctions, Zarrab was a major
8 beneficiary because he orchestrated and brokered the
9 transactions and profited handsomely, and Halkbank was a
10 significant beneficiary in terms of fees earned and the ability
11 to serve as one of Iran's principal Turkish bankers.

12 In its letter dated April 13, 2018, to the Court, the
13 government states that there were four principal categories of
14 financial beneficiaries of the sanctions-evasion schemes.

15 One were Iranian government entities;

16 Two were Iranian banks;

17 Three, according to the government was Halkbank and
18 Zarrab's network of companies; and,

19 Four were Turkish political and banking figures who
20 facilitated aspects of the scheme, and other than Atilla, were
21 paid from its proceeds. Perhaps the government was referring
22 to Mr. Atilla as well, it's not clear.

23 Halkbank, although a significant beneficiary of the
24 scheme was not, as noted, named as a defendant in the case.

25 Clearly, Mr. Atilla was not a beneficiary of these

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1 schemes, and I think that is very significant in this
2 sentencing. Mr. Atilla, who was a named defendant, in no sense
3 was he a direct beneficiary of the schemes, and, as noted, it
4 is undisputed that he was not the recipient of, nor did he
5 solicit, any bribes paid by Zarrab.

6 In large measure Atilla appears to have been a person
7 doing his job, sometimes reluctantly or hesitatingly, under the
8 direction of the Halkbank general manager, Mr. Aslan, who did,
9 in fact, receive bribes.

10 It is difficult to see what Mr. Atilla got out of
11 these conspiracies and the bank fraud for which he was
12 convicted apart from the serious predicament he has found
13 himself in for the last 14 months.

14 Mr. Atilla was arrested and incarcerated on March 27,
15 2017, at JFK Airport on his way back to Turkey after a U.S.
16 business trip, one of approximately I would say ten to twelve
17 that I believe he had made to the U.S. over his career.

18 As of today he's been incarcerated for approximately
19 14 months. After nine months of incarceration, he was
20 convicted following a jury trial of conspiracy to defraud the
21 United States, what we've referred to as the Klein conspiracy,
22 conspiracy to violate IEEPA, the International Emergency
23 Economic Powers Act, and the Iranian Transactions and Sanctions
24 Regulations. He was also convicted of bank fraud and of
25 conspiracy to commit bank fraud and of conspiracy to commit

1 money laundering. Mr. Atilla was acquitted of the substantive
2 money laundering count.

3 At Mr. Atilla's highly publicized trial, the
4 government called 12 credible witnesses, including, among
5 others, Mr. Zarrab, Mr. Cohen, Mr. Zubin, and Josh
6 Kirschenbaum, formerly policy adviser to the U.S. Office of
7 Foreign Assets Control, among others.

8 The defense, by contrast, called only two witnesses,
9 one of whom was Mr. Atilla. Mr. Atilla under our system had
10 every right to testify. Also under our system of justice, he
11 also had every right not to testify. It was his choice.

12 In addition to Atilla's own testimony, the defense
13 called an airlines company employee in order to corroborate
14 Mr. Atilla's testimony that he was not on a particular
15 telephone call because he was traveling at or about the time of
16 the call.

17 The defense's affirmative case was patently
18 insufficient to rebut the government's case or to create
19 reasonable doubt in my opinion.

20 In addition to witness testimony in the main case, the
21 government's case, significant documentary evidence was
22 introduced by the government, including a wiretapped phone
23 conversations, WhatsApp messaging communications, e-mails, and
24 bank records.

25 Importantly, at the trial it became apparent to the

1 Court -- and I've said this several times now -- that
2 Mr. Atilla was neither a chief architect nor a beneficiary of
3 the various schemes to evade sanctions upon Iran. While he
4 played a role in making things happen, he appears to have done
5 what he did to further these schemes principally at the
6 direction of his boss, Suleyman Aslan, at the time the general
7 manager of Halkbank. He was following orders, as I said
8 before.

9 Mr. Atilla nevertheless was partly responsible, but by
10 no means principally responsible, for the organizing and for
11 the success of this multi-million-dollar conspiracies related
12 to the sanctions against Iran.

13 Here are some excerpts from the trial that perhaps
14 better illuminate Mr. Atilla's role and involvement.

15 On November 30, 2017, the transcript shows that
16 Mr. Zarrab testified about a phone conversation between himself
17 and Mr. Atilla related to the food trade business that
18 Mr. Zarrab had earlier discussed with Mr. Atilla's boss,
19 Mr. Aslan. The food trade business was one aspect of the
20 sanctions-evasion scheme.

21 Mr. Zarrab testified: As of this whole conversation
22 Mr. Hakan Atilla was aware that we were going to be involved
23 and we were going to be conducting food trade with Iran, that
24 is, as of that day.

25 However, Mr. Zarrab said, At this time, Mr. Hakan

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1 Atilla did not know that this transaction would not involve
2 actual trade. This is me adding, for your information, as you
3 probably know already, there was no food actually traded to
4 Iran.

5 Now, back to Mr. Zarrab, So Mr. Hakan Atilla is trying
6 to understand this during the phone conversation.

7 Mr. Zarrab goes on to say, Mr. Hakan Atilla had
8 understood through his Halkbank general manager, Mr. Aslan, or
9 perhaps through the branch that there would be real food
10 traded, and now he's saying in this phone call that this is not
11 as he had thought. So he's clearly stating that this does not
12 match up with what he heard.

13 Mr. Zarrab testified as follows, referring to the
14 conversation or meeting he had, Mr. Zarrab had, with Mr. Aslan
15 after the phone call with Mr. Atilla.

16 This is Mr. Zarrab talking: I went and I told
17 Mr. Suleyman that I had talked to Mr. Hakan, and that Mr. Hakan
18 did not understand the matter completely, and I asked him how
19 we should go about it.

20 And how did he respond? was the next question,

21 Mr. Zarrab said: The best I remember is that he gave
22 orders to unblock the transaction and to go ahead and carry it
23 out.

24 And here's the government asking: And do you remember
25 who he gave these orders to?

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1 And Mr. Zarrab responds: To Mr. Hakan Atilla.

2 And the government asks: How do you know that's who
3 he gave the orders to?

4 And Mr. Zarrab responds: Because he called in my
5 presence and he gave these instructions.

6 At that point I asked a few questions of Mr. Zarrab as
7 follows:

8 I asked, who did? Who called?

9 And Mr. Zarrab said: Mr. Suleyman Aslan, your Honor.

10 And then I asked: And he called who?

11 Mr. Zarrab said: Mr. Hakan Atilla, your Honor.

12 And then I asked: And you were on the call, or you
13 heard the call?

14 Mr. Zarrab said: I was face to face with Suleyman
15 Aslan during a meeting at this time, sir.

16 Mr. Zarrab testified as follows, referring to a phone
17 conversation between him and Abdullah Hapmani, an associate of
18 Zarrab, that occurred after this meeting with Aslan.

19 And the government asked: Do you see where you say
20 they placed a roadblock today, and I went there and had it
21 removed?

22 Mr. Zarrab says: Yes.

23 The government says: What did you mean?

24 And Mr. Zarrab says: But just as I explained earlier,
25 Mr. Hakan Atilla did not know about this matter as of the first

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1 time we had met. So I approached Mr. Suleyman regarding this
2 matter and came to a solution.

3 Mr. Zarrab goes on to say: Mr. Suleyman called
4 Mr. Hakan in my presence and told him that they will do this
5 business, and I'm conveying to Mr. Zarrab -- Zarrab is
6 talking -- Mr. Happani his associate.

7 And then the government says: Do you see where you
8 say Hakan Atilla threw a wrench in the gears?

9 This is a question posed by the assistant: Do you see
10 where you say Hakan Atilla threw a wrench in the gears?

11 Mr. Zarrab says: Yes.

12 The government says: What did you mean by that?

13 Mr. Zarrab says: Just as it was heard in the first
14 phone conversation earlier, Hakan Atilla was not open to this
15 idea, for it to be conducted.

16 Zarrab goes on to testify about another phone
17 conversation.

18 The assistant asks this question: Do you next see
19 where Mr. Aslan says, No, we don't have a problem in the food?
20 Do you have a problem with the method posed by Hakan Atilla?

21 Then he, Aslan goes on to say, related to the food
22 trade payments: Do you see that?

23 And Zarrab says: Yes, I see that, sir.

24 The assistant asks then: What did you understand him
25 to mean?

1 Zarrab says: We had held conversations about how the
2 food transactions would be handled with the bank, what methods
3 would be used, and he's asking whether the latest method that
4 we had reached an agreement on, that whether I had any problems
5 with that. And this is the method that Mr. Hakan Atilla had
6 also provided guidance in and made additions to and that
7 provided -- and he's asking me if this last template was
8 something that I agreed with and if there are any issues that I
9 may have with it.

10 So Mr. Atilla, in addition to his arrest and
11 incarceration in the United States on his way back to Turkey,
12 has been a subject of widespread international focus. As any
13 person confined pretrial, he was separated from his family, his
14 colleagues and his friends in Turkey, and his life has, I would
15 suggest, been turned upside down.

16 Atilla should, given the nature and the circumstances
17 of these offenses, particularly his relative role in them,
18 among other factors to be considered, in fairness receive a
19 lenient, nonguidelines sentence.

20 The second 3553(a) factor is called the history and
21 the characteristics of the defendant.

22 Mr. Atilla appears to have led an exemplary life in
23 Turkey apart from this case. This is, in my view, an important
24 3553(a) factor for us to consider.

25 Mr. Atilla is a citizen of Turkey.

1 He's 47 years a old.

2 He's married, has an adult son.

3 He's been employed by Halkbank for his entire career.

4 He has a bachelor's degree in economics from Gazi
5 University in Ankara, Turkey.

6 After he graduated, Atilla entered the Turkish air
7 force as a private and was honorably discharged.

8 As noted, he has worked, loyally I would suggest, at
9 Halkbank virtually all of his adult life in increasingly
10 important capacities and positions and for approximately 23
11 years.

12 In 2007, Mr. Atilla became the head of financial
13 institutions and investor relations, and in 2011 he became a
14 deputy general manager of international banking. And as of
15 2012, Mr. Atilla was a deputy general manager, and he reported
16 directly to Mr. Suleyman Aslan, then the general manager of
17 Halkbank.

18 By all accounts, as I've noted above, Mr. Atilla is
19 skilled in and knowledgeable about the U.S. sanctions program.
20 He is fluent in English, although as a safeguard the Court has
21 always used Turkish interpreters throughout these proceedings
22 to ensure that Mr. Atilla understands each word that is spoken.

23 He's also been a model prisoner during his
24 incarceration. He received a positive MCC report, Metropolitan
25 Correctional Institution, with outstanding performance reviews

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1 from his unit team leader, who concluded that he is a diligent
2 worker and that he demonstrates positive leadership skills
3 among his pierce.

4 Mr. Atilla is extremely well regarded by his friends
5 and family and his Halkbank colleagues.

6 The Court very often receives at sentencing letters of
7 support, but less often are there as many -- by the way, in
8 this case these are the letters I've received on his behalf.
9 There are 101 of them I believe. But these letters are from a
10 foreign country. As in this case, I've never received letters
11 which are quite I think as insightful, certainly never in this
12 amount, and never in this detail.

13 Letters were sent by family, friends and work
14 colleagues, most in Turkish. I believe they were translated by
15 the official court interpreters. That's my understanding. I
16 found them to be of great help in sentencing and important in
17 assessing this factor, history and characteristics of the
18 defendant.

19 The letters appear sincere and insightful. I have
20 read them, yes, as a judge with eyes wide open.

21 The letters, to be sure self-selected, reflect well
22 upon Mr. Atilla and they also reflect well upon the Turkish
23 people who sent them. Mr. Atilla is widely respected, as
24 described in these letters. He is an exceptional family man
25 and a citizen who is married to, if I pronounce this correctly,

1 Burcin, who also works at Halkbank and has a son, Burcan, who
2 is attending college.

3 Mr. Atilla's parents also wrote in support of their
4 son, understandably. They are retired and are also former
5 state employees. His father, Mehmet Isik, is 74. His mother
6 is also in her 70s, Ayse.

7 Mr. Atilla is consistently described as a person who
8 is devoted to his family, successful in his career, loyal to
9 his employer. He's described as kind, gentle, modest in
10 lifestyle and considerate of and helpful to others. He has
11 never, according to the letter writers, had any criminal issues
12 in his past.

13 These letters are from seemingly ordinary Turkish
14 people who appear well able to describe and explain who
15 Mr. Atilla is, namely, the characteristics of the defendant.
16 They cannot excuse Mr. Atilla's role in the sanctions scheme,
17 notwithstanding that some expressed their disbelief that he
18 could be involved in any unlawful activity.

19 The letters, in addition to supporting Mr. Atilla,
20 well represent ordinary Turkish people as far as I can
21 accurately perceive them. They clearly suggest that people to
22 people, which is to say from Turkish citizen to American
23 citizen, from that, one would not conclude that U.S. and
24 Turkish relations would be anything but close, open, friendly
25 and direct.

1 Indeed, it is very difficult to reconcile the
2 collaborative, polite, informative kind and generous letters of
3 support for Mr. Atilla from ordinary Turkish citizens with the
4 sometimes very harsh rhetoric from Turkish government officials
5 about this case.

6 All of the letters are respectful.

7 For example, one starts, "Honorable Judge Berman, as a
8 lawyer in a southeast European country I am convinced that the
9 American legal system is a real and fair system which
10 contributes to justice being served. I hope that this is the
11 case in this case and that justice will be served as well."

12 Another example, someone writes, "I sincerely believe
13 and have complete trust in American justice and society.

14 So let me read you one or two of these letters in
15 whole.

16 It is addressed to your Honor and it says, "I am a
17 49-year-old Turkish republic citizen. I have a wife and a
18 12-year-old son, and I have been working at Halkbank for 19
19 years. We've been working in the same bank as Mr. Mehmet Hakan
20 Atilla for the last ten years, and we have been frequently
21 interacting with each other at work regardless of working in
22 the same department or not.

23 "Mr. Atilla is a dutiful, kindhearted, truthful,
24 honest person who values justice. He has established a
25 merit-based management approach in all the departments he had

1 managed.

2 "Your Honor, Mr. Atilla is a good person in the exact
3 sense that it is often mentioned in the Torah, the psalms and
4 our holy book, the Koran. Hakan Atilla carries all the
5 required desired common values of humanity. Mr. Atilla is one
6 of the few people I know whose whole private life consists of
7 his wife and his son. He is respectful and loving to the
8 people around him and respects the ideas and values of
9 everyone.

10 "Mr. Hakan Atilla was the person who was by my side at
11 my mother's and father's funeral, whom I lost very suddenly and
12 unexpectedly. The funeral was held in another city, but he
13 still attended without caring about the distance and the time.

14 "Mr. Hakan Atilla believes in fate. That is why he
15 would never divert from the truth mentioned in the holy books,
16 and he would always defend his values with the truth.
17 Mr. Atilla is a person who says I will always be honest and
18 stick by the truth regardless of the consequences.

19 "Mr. Atilla is a person whom he and his family are
20 always in our prayers. We pray so that he can reunite with his
21 family as soon as possible. Mr. Hakan Atilla is the subject of
22 all our talks and conversations, even if he is not present.
23 The support and love of the Turkish people are with him.
24 Nobody can say that he has behaved immorally or treated someone
25 unfairly, nor has performed malpractice or hurt anybody.

1 Unlike some people, he would never go against his values.

2 "Your Honor, we are people who believe in destiny. We
3 assume that you believe in it too. Your Honor, life is short.
4 We believe that doing the right thing for this person who has
5 never digressed nor diverted from what is right and who has
6 never done anything haram, or, in other words, unkosher, like
7 spending a single lira belonging to someone else, as it has
8 been stated before in the process and which is also considered
9 a pillar of our religion.

10 "It should be an easy decision. We want to believe
11 that you have the tender heart to make a decision that would
12 reunite him with his spouse and child and all of us.

13 "One can write and say many more things about
14 Mr. Atilla. We believe in justice and in the truth and in what
15 is right. We believe with all our hearts that a judge with
16 such expertise as yourself will not deny or deprive us from
17 such compassion and mercy. May God almighty, Allah, be the
18 companion and guide to us all."

19 That is one of, as I said, 101.

20 Here are excerpts from some of the other letters.
21 "He" -- the "he" in all of these refers to Mr. Atilla -- "is
22 one of the most successful and esteemed high-level bank
23 executives in our country, and he is well respected within the
24 whole banking community."

25 Another letter says, "Mr. Atilla extends a helping

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1 hand to everyone around him whenever they face difficulties, be
2 it financial or otherwise. If there is anything he can do to
3 help, he tries to do it. In other words, if he had just one
4 slice of bread, he would gladly share it with others. He helps
5 everyone, anyone in need without ulterior motive."

6 Another letter says, "At the time when my father had a
7 very serious operation in Istanbul, he Hakan stayed with us
8 through the whole process. We cannot forget the incredible
9 support he gave us with his continuous words of comfort. He
10 even gave us the keys to his apartment in case we needed it.
11 In fact, I watched him comfort other patients' relatives and
12 some people he didn't even know at the hospital. He was always
13 by our side and there for us."

14 There are many other examples that I could read.

15 I'll read one final from these letters.

16 "Hakan was not one of those greedy and ambitious
17 people who would want to do everything he gets his hands on.
18 Having a happy and peaceful life was very important for us.
19 Therefore, he always avoided being greedy."

20 So these are the letters from the Turkish people that
21 argue in my judgment persuasively not only because of the
22 letters, but for leniency and fall under the 3553(a) category
23 called history and characteristics of Mr. Atilla.

24 By the way, there is a letter, as you are all aware,
25 from the Turkish government in this case. It's a short letter

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1 sent from the Turkish government to the U.S. government which
2 reads: "Accordingly, and without admitting or corroborating
3 any of the conduct alleged in the indictment, the embassy" --
4 this is I think from the Turkish embassy in the United States
5 to perhaps the State Department -- "the embassy kindly requests
6 the esteemed department's assistance for Mr. Atilla's urgent
7 release." Dated October 23, 2017 from the Turkish embassy in
8 Washington.

9 So, moving along to the third 3553(a) factor, the need
10 for the sentence imposed to reflect the seriousness of the
11 offense, to promote respect for the law, and to provide just
12 punishment.

13 I will take one at a time in somewhat less detail than
14 we have been taking up until now.

15 There is no doubt in the Court's opinion, as noted,
16 that the Iran-sanctions-evasion schemes, conspiracies and its
17 participants, and those schemes included the Klein conspiracy
18 against the United States and, in fact, meetings with Atilla
19 and U.S. officials in Washington, D.C. at the U.S. Treasury
20 Department, I believe it's a serious matter. It depended upon
21 and impacted, as with other sanctions cases, the U.S. financial
22 system and important issues of U.S. domestic security and U.S.
23 relations to its historical allies and to those who may be U.S.
24 antagonists.

25 The scheme in this case involved many millions of

1 dollars, largely in the form of Iranian oil proceeds held at
2 Turkey's state-owned Halkbank.

3 At the same time, the responsibility for and the
4 impact of these offenses cannot all be attributed only to
5 Mr. Atilla. Mr. Aslan, Mr. Zarrab, Halkbank, Iran, others had
6 far more to gain financially and appear to have been far more
7 crucial players in the behavior we have been discussing.

8 The prosecutors here recognize that the advisory
9 sentencing guidelines range they propose is effectively a life
10 sentence, which has but rarely been imposed in cases most
11 analogous to this one. And I note again that there is a
12 statutory maximum term of incarceration here of 105 years.

13 The government says that, pursuant to a case entitled
14 *U.S. v. Dhafir*, a Second Circuit decision from 2009, the Court
15 can elect to adopt a more flexible and lower proposed
16 guidelines sentence. According to the government, under that
17 case, the Court has discretion to consider the guideline range
18 in the government's opinion of 168 to 210 months and also to
19 consider the sentencing maximum and also to consider the
20 Section 3553(a) factors to determine an appropriate sentence.

21 The defense counters the government and says that the
22 sentence here should be directed at vindicating and protecting
23 national security interests in a way that is consistent with
24 other dispositions for sanctions violations that have involved
25 other banks and the bankers who work for them, not on the basis

1 of some imagined amount of loss for funds allegedly laundered
2 as the presentence investigation report would have it. The
3 defense goes on to say that Hakan has now spent 12 months in
4 detention more than 5,000 miles from his wife, his only son,
5 his aging parents, his family, and friends. Mr. Atilla was a
6 banker who was at most -- this is the defense talking -- a
7 small cog in Zarrab's massive scheme, and was certainly not the
8 leader of the scheme.

9 Moving on to affording adequate deterrence to criminal
10 conduct. The government argues that deterrence is an important
11 factor here to send a message to "a multitude of foreign banks
12 and businesses tempted to support a sanctions-evasion regime
13 while still enjoying the privilege of access to the United
14 States economy and financial system."

15 The defense responds that this prosecution in itself
16 will doubtless have a substantial impact on foreign bankers who
17 will be deterred from misconduct by Hakan's -- Mr. Atilla's --
18 sudden arrest and detention and the obvious long arm of U.S.
19 law enforcement authorities.

20 Deterrence is obviously an important 3553(a) factor in
21 this case, general deterrence even more important than specific
22 deterrence. The Court believes that the likelihood that
23 Mr. Atilla would commit the kind of crimes for which he stands
24 convicted or, for that matter, any crime following this case is
25 virtually nonexistent. General deterrence mostly will be

1 served by this prosecution and sentence.

2 Then moving to the issue of protecting the public.
3 Mr. Atilla does not in my judgment reasonably pose a threat to
4 commit any other crimes. The unlawful actions taken in this
5 case were largely at the behest of others, including his boss,
6 Mr. Aslan, and appear to be out of character except perhaps as
7 they may have been driven by loyalty to his career employer,
8 Halkbank, and to his country.

9 The next factor, providing defendant with needed
10 medical and other care. Mr. Atilla appears to be a very well
11 balanced, highly educated intelligent family man. He has
12 received some medical treatment while incarcerated, and
13 probation is aware that Mr. Atilla has been affected
14 emotionally of course, as anyone would be, by his
15 incarceration. His family no doubt will secure appropriate
16 additional medical treatment for him at such time as he gets
17 home to Turkey.

18 The Court will recommend that Mr. Atilla continue to
19 receive appropriate medical treatment while incarcerated.

20 Turning next to the kinds of sentences -- these are
21 all the 3553(a) factors -- the kinds of sentences available.
22 We've pretty much covered this topic already today, and I will
23 soon move to the next phase of sentencing, which is to hear
24 from the parties and Mr. Atilla if he wishes and to preview the
25 sentence.

1 But, before that, it's necessary that I mention that
2 the sentences on each count of conviction will in my
3 determination run concurrently.

4 The statutory maximum term of imprisonment on Count
5 One is five years.

6 The statutory maximum term of imprisonment on Counts
7 Two and Six is 20 years.

8 The statutory maximum term of imprisonment on Counts
9 Three and Four is 30 years.

10 There are no mandatory minimum terms of imprisonment
11 in this case.

12 The total statutory maximum term of imprisonment, as I
13 have said before, for all counts is 105 years, and that is if
14 the maximums were to be imposed consecutively rather than
15 concurrently, which will not happen here. If the sentences
16 were to run concurrent, the maximum would be dramatically lower
17 at 30 years.

18 With regard to what we call supervised release, which
19 is the period of supervision following release from
20 incarceration, Counts One, Two and Six have a sentencing
21 guidelines range of one to three years of supervised release;
22 Counts Three and Four have a guidelines range of two to five
23 years.

24 Counts One, Two and Six have a statutory maximum of
25 three years, and Counts Three and Four have a statutory maximum

1 of five years.

2 In my judgment supervised release is unnecessary and
3 inappropriate here. I'm not planning to impose any term of
4 supervised release. It's the Court's intention that, upon
5 completion of Mr. Atilla's term of incarceration, that he will
6 be free to reunite with his family and colleagues in Turkey.

7 Then the fifth factor, the kinds of sentence in the
8 sentencing range established in guidelines. As previously
9 mentioned several times, the Court has calculated the
10 guidelines range to be 97 to 121 months based on an adjusted
11 offense level of 30 and a criminal history category of I.

12 I have scrutinized all of the 18 U.S.C. Section
13 3553(a) factors both before I came on the bench and during this
14 proceeding, and they all lead in my judgment to a nonguidelines
15 sentence and one which is appropriately lenient in nature.

16 As to policy statements issued by the Sentencing
17 Commission, no Sentencing Commission policy statements other
18 than as reflected above or in the previous discussion are known
19 to the Court, and neither the defense or the government have
20 brought any to my attention.

21 And then the question of avoiding unwarranted sentence
22 disparities among similarly situated defendants. I have
23 studied closely counsel's computations and proposed sentences.

24 The parties acknowledge that this case presents a
25 somewhat unique set of circumstances. Comparators are not

1 readily available, nor are they dispositive. The only in-case
2 comparator is Mr. Zarrab, who has not been sentenced, and his
3 circumstances as a cooperator and a major role player are very
4 different from Mr. Atilla's in any case. The government
5 acknowledges that the crimes that Mr. Atilla committed are
6 without ready comparison. The government also argues that the
7 individuals whose sentences the defense relies upon, each bear
8 substantial differences from Mr. Atilla. The government
9 acknowledges that the defendants in those other cases cited by
10 the defense are not squarely comparable to Mr. Atilla.

11 The defense contends that the government's prosecution
12 of Mr. Atilla is a notable departure from the long line of
13 cases in which banks and bankers accused of violating IEEPA or
14 otherwise engaging in activities designed to avoid sanctions
15 were not prosecuted. Defense counsel also point out that the
16 individuals who have been convicted of IEEPA violations have
17 often received downward variances from the guidelines, and they
18 cite among other things, the *Banki* case, where there was a 63-
19 to 78-month guideline range and a 30-month sentence was
20 imposed.

21 They also cite *Amirnazmi*. That's another case where
22 the guideline range was 97 to 121 months and where a 48-month
23 sentence was imposed.

24 And they cite *Sarvestani*, where the guideline range
25 was 57 to 71 months and a 30-month sentence was imposed. In

1 that case, by the way, *Amirnazmi*, which is a Third Circuit
2 decision from 2011, the defendant was a dual citizen of the
3 United States and of Iran. He was convicted after a jury trial
4 of multiple violations of IEEPA of making false statements to
5 federal officials and of bank fraud. As I said, he received a
6 48-month sentence. He was a chemical engineer who marketed a
7 software program to Iranian people and entered into agreements
8 with various Iranian entities in which he pledged to provide
9 technology to facilitate the construction of multiple chemical
10 plants.

11 In the *Banki* case, Judge Keenan was the trial judge.
12 The defendant there was a naturalized U.S. citizen who was
13 convicted after a jury trial of a conspiracy to violate IEEPA
14 and of a substantive offense of IEEPA violation and the Iranian
15 transactions regulations because he conducted an unlicensed
16 money transmitting business and made false statements to
17 federal officials.

18 In the *Sarvestani* case, presided over by Judge
19 Gardephe, the defendant was a non-U.S. citizen who pled guilty
20 to conspiracy to violate IEEPA. The defendant operated
21 multiple companies that procured U.S.-made goods for Iranian
22 companies by shipping the goods through third-party countries.

23 The government here it should be noted also argues
24 that the sanctions matters that the defense relies on are
25 distinguishable because they often involved, this is a quote

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1 from the government "significant acceptance of responsibility,
2 extensive internal investigations that were shared with
3 investigating authorities, the adoption of meaningful
4 compliance reforms, disciplining officers and employees who
5 directed or abetted the sanctions-violating conduct, the
6 payment of substantial monetary penalties reflecting the
7 seriousness of the offense conduct, and ongoing commitments to
8 cooperate with law enforcement in investigations."

9 (Continued on next page)

1 THE COURT: (Continuing) And according to the
2 government, none of these are present here.

3 So given all the 3553(a) factors which are analyzed
4 above, I conclude, again, as I mentioned, that leniency in
5 sentencing is called for in Mr. Atilla's case.

6 Turning to the need to provide restitution, according
7 to probation and the parties, restitution is not an issue in
8 this case, and I do not intend to impose restitution as part of
9 the sentence.

10 As for a fine, the government requests a monetary fine
11 within the guideline range of 50,000 to \$500,000. The defense
12 does not make any recommendation for a fine, and the probation
13 department does not recommend a fine either, because it
14 concluded that, to the probation department, Mr. Atilla does
15 not appear to be able to afford to pay a fine. In any event, I
16 do not intend to recommend a fine against Mr. Atilla. I don't
17 thinking it is warranted or appropriate, based largely upon the
18 recommendation of probation.

19 So I'm going to take a short break and then move to
20 the next part of the proceeding, which is to talk about what we
21 call the presentence investigation report, which is a
22 confidential document and to preview the sentence that I intend
23 to impose.

24 So before the break I'm going to ask Christine to hand
25 out just to the lawyers, because these are confidential

1 matters, a chart that I prepared which discusses all the
2 defense objections to the presentence report, and my resolution
3 of those objections. So you can take a minute or two.

4 I will say this about the objections. They are
5 generally not made or perhaps not even appropriate if used, as
6 many are in this case, as an opportunity by defense counsel to
7 reargue prior rulings and/or to dispute the jury verdict. My
8 evaluation is that of the 44 objections that were presented,
9 really only the objections to paragraphs 65 and to 67 impact
10 the calculation of Mr. Atilla's offense level and guidelines
11 range.

12 But you'll see that I did deal with every one of the
13 objections, and as to the guideline range, it's going to be a
14 non-guideline sentence. So, they don't have much impact there
15 either. But you can look these over. These are just for the
16 attorneys and Mr. Atilla. So five minutes, we'll resume.

17 (Recess)

18 (In open court)

19 THE COURT: We're moving now to what is called the
20 presentence report which I've received, it was approved
21 April 4, 2018, together with an addendum of that same date.

22 I've received correspondence from the defense dated
23 3/26/18, 3/30/18, 4/13/18, 5/8/18, 5/4/18. I believe I have
24 these dates right. And 5/11/18. And that's from the defense.
25 Hold on one second.

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1 So let me go over that again. These are the principal
2 submissions that I received from the defense, 3/26/18, 4/13/18,
3 and if there are ones that I missed I'll ask you and you can
4 supplement this list. 3/30/18, 5/8/18, that's from defense.
5 From the government, 4/4/18, 4/13/18, 5/14/18 and May 11, '18.
6 I think those are the principal ones.

7 Any that I missed, starting with the government?

8 MR. LOCKARD: No, your Honor.

9 THE COURT: How about defense counsel?

10 MR. ROCCO: No, your Honor.

11 THE COURT: Okay. So, Mr. Rocco, have you and
12 Mr. Atilla had the opportunity to read and discuss the
13 presentence investigation report in this case, including its
14 addendum and sentencing recommendation?

15 MR. ROCCO: We have, your Honor.

16 THE COURT: Mr. Atilla --

17 MR. ROCCO: I have reviewed it with Mr. Atilla, and
18 Mr. Atilla and I have discussed it and reviewed it and the
19 addendum.

20 THE COURT: And the addendum and sentencing
21 recommendation?

22 MR. ROCCO: Yes.

23 THE COURT: Just for the record I'm going to ask
24 Mr. Atilla if he went over those materials with you.

25 THE DEFENDANT: Yes, I read, your Honor.

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1 THE COURT: Okay. Do you have any remaining
2 objections or any objections remaining to the presentence
3 investigation report?

4 MR. ROCCO: Your Honor, Ms. Fleming is going to
5 address a technicality, Judge.

6 MS. FLEMING: Of course. Judge, we'll rest on
7 whatever objections we've already made. We need to add one
8 that we had not put in writing related to the obstruction,
9 which is only to add for the record that there was a conscious
10 avoidance charge at the trial that might relate to perjury at
11 trial, and we think we need to put that on the record. That
12 may help us with regard to an allegation -- and we
13 appreciate --

14 THE COURT: I don't understand.

15 MS. FLEMING: We understand that the Court has made
16 very detailed findings and put them on the record, and you
17 found that Mr. Atilla committed perjury at trial, and you said
18 as a basis for obstruction. And you've made your findings very
19 clear. We wanted --

20 THE COURT: I did that when?

21 MS. FLEMING: A few minutes ago, earlier today. When
22 you were going through and indicating your preliminary findings
23 with regard to it.

24 THE COURT: So if you could just indicate, that's what
25 I'm --

1 MS. FLEMING: You did that earlier today.

2 THE COURT: No, I know, but you're referring to?

3 MS. FLEMING: When you were talking about the adding
4 two points for an obstruction of justice enhancement under the
5 guidelines, so we just wanted to put, we also wanted to add --

6 THE COURT: Because his testimony was at variance with
7 other testimony.

8 MS. FLEMING: Yes. It was at variance with other
9 testimony. And because of the jury verdict, it did not mean
10 that the jury did not accept all of his testimony, because
11 there was a conscious avoidance charge.

12 The only other objection, when I looked through the
13 addendum that the Court just handed out, on page 12, without
14 going to what it is, on paragraph 36, and without arguing with
15 the Court, we just want to note an objection --

16 THE COURT: This is the objections to the presentence
17 investigation report?

18 MS. FLEMING: This is your schedule that you just
19 handed out.

20 THE COURT: It's called "Defendant's Objections Dated
21 April 13, 2018." Is that the document?

22 MS. FLEMING: That's the document. That's correct.
23 Your Honor, without reading it, because I know it is a
24 sensitive document, but if you look on page 12, in paragraph
25 36, where the Court is going to add several sentences to

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1 paragraph 36 in response to our objection and the government's,
2 we just noted an objection to those additional sentences. We
3 don't think that is what the evidence is.

4 THE COURT: Okay. Mr. Atilla, do you have any further
5 objections yourself?

6 THE DEFENDANT: No, your Honor.

7 THE COURT: I'm sorry?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: No. Okay.

10 So I will, which is our practice, return the
11 presentence report to probation.

12 And at this point I'm happy to hear from defense
13 counsel, from Mr. Atilla, and from the government before I
14 preview the sentence I intend to impose.

15 MR. ROCCO: Your Honor, if I may.

16 THE COURT: Do it at the podium if you'd like.

17 MR. ROCCO: I will.

18 THE COURT: Okay.

19 MR. ROCCO: Your Honor, thank you for the extensive,
20 very detailed, comprehensive and thoughtful review that your
21 Honor did of the record in this case. You stole my thunder,
22 Judge. And I learned a long time ago, at least I hope I
23 learned a long time ago that the art of litigation is the art
24 of knowing when to shut up.

25 But, I do say, if I may, Judge, that one of the things

1 that I was going to say in the lengthy presentation here this
2 morning that I've abandoned is that what we need to show the
3 world in proceedings such as this, especially today, especially
4 now, is that we Americans aren't bullies. That we are a
5 generous and compassionate people. That although we are a
6 nation of laws, justice is tempered by mercy. Our judges are
7 as courageous as they are just, and as compassionate as they
8 are wise.

9 What I heard this morning, your Honor, I think
10 perfectly embodies those thoughts. And I'm moved by them and
11 I'm sure everybody in this courtroom is moved by them. And I
12 thank you for them and Mr. Atilla thanks you for them.

13 I have nothing else to say, Judge. You have
14 reflected, I think, a deep understanding of what happened here.
15 And we ask you in imposing sentence, to understand that
16 Mr. Atilla's never sought any special treatment, there has been
17 no political interference. Plainly, nobody's ever offered to
18 do anything for him. He stands before the Court, and he cannot
19 say, he can only ask, that your Honor temper your judgment with
20 mercy. We're asking you to open your heart, and to send him
21 home to his family and to his countrymen as soon as possible.
22 Thank you, Judge.

23 THE COURT: Mr. Atilla, did you want to add something?

24 MS. FLEMING: Mr. Atilla wrote out something in
25 Turkish and then we had it interpreted. He's asked that I read

1 it. Is that acceptable to the Court?

2 THE COURT: Absolutely.

3 MS. FLEMING: Just before I do, if the Court will
4 allow me just one moment of personal privilege if it will.
5 I've done this for a lot of years, both at this table and at
6 that table. And this has been a very difficult and hard-fought
7 trial, as the Court saw.

8 I think everybody has shown real civility to each
9 other, and I think that the lawyers have all behaved very
10 professionally. Of course all the courtesies of the Court were
11 always present.

12 But I really want to say, I know I'm speaking for
13 everyone at our table, that it's been a privilege to represent
14 Mr. Atilla. What your Honor read in those letters is something
15 we have all seen over the last year under extremely difficult
16 circumstances by him. He has really been just a gentleman
17 through and through. I think the Court has seen it, and we
18 know that. So I wanted to say that personally.

19 So on behalf of Mr. Atilla, here is the English
20 translation of what he asked me to share with the Court. And
21 the last sentence he added during the break for the judge.

22 "Today is the first day of the holy month of Ramadan.
23 One of Islam's most sacred days. Ramadan is a period where the
24 virtues of patience, sacrifice, leniency, mercy, and compassion
25 are heavily felt. Muslims fast and understand those people who

1 are hungry and what it feels like to be hungry and to help
2 those in need. The best way to understand another's life is to
3 internalize the other person's condition.

4 "I kindly request your understanding for the situation
5 that I and my family are in. In this past year, I have learned
6 many new things, and what I used to consider as a priority, has
7 now profoundly changed. As of now, apart from my family, I
8 have no other priorities.

9 "Thank you for your very thoughtful consideration."

10 THE COURT: You're very welcome. And the government?

11 MR. LOCKARD: I'll take the podium, your Honor.

12 THE COURT: Sure.

13 MR. LOCKARD: So, your Honor, as we all know,
14 Mr. Atilla was convicted of the five felony offenses following
15 approximately four weeks of trial, in which he received the
16 full extent of due process and procedural protections as he is
17 entitled to under the American system of justice.

18 And I think from the proceedings so far this morning,
19 it is clear that in addition to a fair trial, Mr. Atilla will
20 also receive a fair sentence. It is clear that the Court has
21 carefully and deeply considered all the proceedings in this
22 case, as well as the evidence that was introduced at trial, and
23 the relevant sentencing laws and factors.

24 I'd like to address the government's remarks to
25 principally the two areas that we think are extremely

1 significant in considering an appropriate sentence in this
2 case, which are both the nature and seriousness of the offense,
3 and the defendant's role in it. Those are not only important
4 categories, but also big categories, and the Court has
5 addressed them at length this morning, but I would like to
6 share the government's view of what the evidence adduced at
7 trial shows about those two things.

8 I respectfully submit that the evidence showed through
9 approximately four weeks of testimony and thousands of
10 exhibits, that Mr. Atilla was a significant, not a minor, but a
11 significant participant, and not a reluctant one.

12 I respectfully submit that the evidence showed that
13 Mr. Atilla was a committed participant in a conspiracy to
14 undermine United States sanctions that related to Iran's
15 globally dangerous and destabilizing conduct, and in
16 particular, sanctions targeting Iran's illicit military nuclear
17 program.

18 I think the evidence showed that Mr. Atilla was a
19 participant in that conspiracy for more than three and a half
20 years, from 2012 until early 2016. That he participated in
21 that conspiracy at the height of his professional standing and
22 responsibility, as the deputy general manager of Turkey's
23 second largest state-owned bank.

24 I submit that the evidence showed that this conspiracy
25 happened within Mr. Atilla's main areas of professional

1 responsibility as the deputy general manager for international
2 banking, a position that he rose to, following Mr. Suleyman
3 Aslan's promotion from that very same position to general
4 manager of the bank. That they were within Mr. Atilla's core
5 professional responsibilities as deputy general manager for
6 international banking, for U.S. and international sanctions,
7 for Iranian banking and oil relationships. In his position at
8 the bank, that was the main financial channel for Iranian and
9 Turkish trade. At the bank, that was the sole repository of
10 Iranian oil revenues from Turkish purchases of Iranian
11 petroleum products.

12 And that conspiracy succeeded to a massive scale,
13 because of Mr. Atilla's success in concealing that scheme and
14 in lying to the senior most U.S. officials responsible for the
15 implementation and enforcement of those sanctions.

16 That scheme succeeded to a massive scale because of
17 Mr. Atilla's expertise in developing the means and methods by
18 which the conspiracy was carried out, both in the gold
19 transactions and in the fake food transactions.

20 I submit that there was no one at the bank that had a
21 greater or more direct responsibility for stopping the offense
22 conduct. But instead, Mr. Atilla actively joined and furthered
23 it, and as a result, greatly increased his bank's profits from
24 this enormous gold and food trade, and protected his bank from
25 what one witness at trial called a potential death blow of

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1 being sanctioned under the U.S. authorities for participating
2 in that conduct.

3 So, addressing Mr. Atilla's role, both at the bank and
4 in the offense conduct, I'm going to address both his role in
5 terms of formal responsibilities and position, as well as some
6 concrete examples of how he exercised that role and
7 responsibility, and respectfully submit that this shows that
8 not only was Mr. Atilla a leader -- not the leader, certainly,
9 and I think we're very candid about the scope and scale of the
10 conspiracy and the range of participants that it had. But I
11 think the law is also clear that a conspiracy can have multiple
12 leaders, each with separate layers of responsibility. And even
13 someone who is supervised by others can in turn exercise
14 managerial responsibility within their sphere.

15 But at the very least we would submit that this shows
16 that Mr. Atilla was certainly not a minor participant, and I'll
17 explain why we think that the evidence shows that that's the
18 case.

19 As I mentioned, Mr. Atilla was the deputy general
20 manager for international banking. And in that role, he was
21 the person responsible for Halkbank's international banking
22 relationship, both its U.S. correspondent account, a very
23 important lifeblood of an international bank in having access
24 to U.S. dollar transactions and the U.S. financial system.
25 Also responsible for the bank's relationships with other

1 international banks, especially Iranian banks, and an
2 enormously important one was the Central Bank of Iran which had
3 a multibillion dollar account at Halkbank to hold the proceeds
4 of Iran's sales of oil and natural gas to Turkey.

5 Because of that, Mr. Atilla, also as part of his
6 position at the bank, had responsibility for Halkbank's
7 involvement in the Iranian oil trade. All of this is happening
8 within the heartland of what it is that he does at the bank.

9 Mr. Atilla, getting down more granularly, joined in
10 and actively participated in this conspiracy at an important
11 level in 2012. I think that's shown in a number of ways. It's
12 shown through his participation. There are not many people who
13 are participating in a lot of different high-level important
14 meetings. Mr. Atilla is doing that. He is meeting not only
15 with the undersecretary for the U.S. Treasury Department, the
16 director of OFAC, he's also meeting with senior officials of
17 the National Iranian Oil Company, he is meeting with senior
18 officials of Iranian banks on both sides of what's happening.
19 The conduct to evade and undermine the sanctions, and the
20 meetings to conceal and lie about what's happening.

21 He is applying his sanctions expertise to give
22 instruction and direction to Mr. Zarab and his employees about
23 how to document these transactions. And that's shown in the
24 evidence when, in August of 2012, which is shortly after
25 Executive Order 13622, which includes the sanctions provisions

1 relating to the facilitation of gold acquisition by the
2 government of Iran, within days, the export documentation for
3 Mr. Zarrab's companies' gold exports switches wholesale from
4 being exported to Iran to being exported to Dubai. The obvious
5 reason for doing that is to conceal the government of Iran's
6 role in funding these gold purchases, and benefit that it
7 obtains from having that gold resold in Dubai, so that there is
8 a ready access to a huge pool of essentially unregulated funds
9 in Dubai for the government of Iran and Iranian banks.

10 And as Mr. Zarrab testified, and as I think the rest
11 of the evidence is consistent, it was Mr. Atilla who directed
12 that change.

13 Again, in February of 2013, when the bilateral trade
14 requirement came into effect as a result of the IFCA, it
15 switches again back from Dubai to Iran. And in a recorded
16 phone call, Mr. Zarrab describes how that's Mr. Atilla's
17 instructions, and it is because of the sanctions. And that's
18 in order to appear to comply with the bilateral trade
19 requirement governing oil revenues, and this is all
20 Mr. Atilla's personal involvement and direction in aspects of
21 the gold trade.

22 With respect to the fake food trade, Mr. Atilla's
23 boss, Mr. Aslan, calls it "Atilla's method." At a time when
24 Mr. Aslan and Mr. Zarrab have no reason to believe that their
25 communications are going to be intercepted or recovered. This

1 is how they among themselves are describing the fake food
2 system. Mr. Atilla gives directions to Mr. Zarrab about how to
3 better falsify documents and transactions, about how to correct
4 errors relating not only to transaction amounts, to the
5 purported volume of the sales, and to the purported ships that
6 are being used in the fake documents. He protects Mr. Zarrab
7 from being required to submit bills of lading and other
8 documents that he cannot submit without exposing the scheme to
9 detection. And all of this simultaneous to making contrary
10 representations to the United States Treasury Department.

11 So I'd like to address for a moment about how
12 Mr. Atilla's role compares to the average participant in the
13 offense, which is the relevant phrasing of the guidelines.

14 So as the Second Circuit has explained, the average
15 participant is the average participant in the offense. Because
16 of the scope and scale of the offense, that covers a pretty
17 large ladder of people, including, as the Court already has
18 noted, government of Turkey officials, Mr. Atilla's boss
19 Suleyman Aslan, and Mr. Zarrab and his employees and companies.
20 It also involves other people at the bank who are less senior
21 than Mr. Atilla. It includes Levant Balkan, who was charged as
22 a co-defendant and who had a less senior position and a shorter
23 participation in the conspiracy. The Court and jury saw
24 Mr. Atilla's e-mail exchanges with Hakan Aydogan, where
25 Mr. Atilla gives Mr. Aydogan instructions to reduce the amount

1 of documentation that the bank required from Mr. Zarrab.

2 Mr. Aydogan is a lower-level employee than Mr. Atilla.

3 It includes a whole host of Mr. Zarrab's employees,
4 like co-defendant Abdullah Happani, who was a manager of
5 Mr. Zarrab's offices. Another Zarrab employee, Camellia
6 Jamshidy, and a whole host of gold couriers, money couriers,
7 people involved in operating front companies or exchange house
8 accounts. It includes the Iranian government officials and oil
9 officials.

10 It is a wide ladder, and Mr. Atilla certainly had more
11 responsibility and more discretion and more authority than a
12 lot of those people. He did not have the most authority in the
13 offense. He is not the top defendant. But he is a significant
14 defendant. And we submit that the evidence is inconsistent
15 with a minor role for Mr. Atilla.

16 So I'd like to address a little bit the evidence about
17 Mr. Atilla's role and whether or not he was a reluctant
18 participant. It is an important consideration for Mr. Atilla's
19 culpability and the appropriate sentence. And I'd like to take
20 the opportunity to walk the Court through how the government
21 assesses that evidence through the evidence that was adduced at
22 trial.

23 So specifically, the Court has highlighted, and I
24 think appropriately so, whether the events of April of 2013
25 illustrate that Mr. Atilla was a reluctant participant. I'll

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1 suggest that it does not show that, and I'd like to walk
2 through the evidence and why it is that we think it does not
3 show that.

4 So, as has already been discussed at length, in April
5 of 2013, Mr. Zarrab and Mr. Atilla spoke about the fake food
6 business that Mr. Zarrab was in the process of starting up.
7 That he was starting up at the instruction of the bank, not on
8 his own initiative. At this time, Mr. Atilla was already a
9 full-fledged member of this conspiracy for about a year through
10 the gold transactions. He was not a new member of the
11 conspiracy at this point. He already had been lying to the
12 U.S. Treasury officials about Halkbank's role and knowledge of
13 the gold trade since 2012 in meetings and in phone calls with
14 Mr. Cohen and Mr. Szubin. He already had given Mr. Zarrab and
15 his employees directions about how to document the gold exports
16 in order to appear to comply with the precious metal sanctions
17 provisions and the oil provisions.

18 All of this, we submit, suggests that Mr. Atilla was
19 not a reluctant participant in the conspiracy. And in fact,
20 Mr. Atilla himself, when he testified, he testified "Nobody can
21 make me do something that I don't want to do."

22 So how do we interpret this phone call? And we
23 suggest that what this episode shows is not that Mr. Atilla was
24 less culpable as a result of this reluctance that he showed.
25 It shows that Mr. Atilla was concerned about detection. Not

1 about the moral impact or the legal impact, but about detection
2 of the scheme.

3 Mr. Atilla at this point, as Mr. Zarrab credibly and
4 candidly testified, did not yet know that these food
5 transactions would be entirely fake. Mr. Atilla recognized on
6 the face of the description of the scheme that it was
7 problematic and unrealistic.

8 Mr. Atilla in April of 2013 had just been warned in
9 recent meetings with Treasury officials, he had just had the
10 pull-aside with OFAC Director Szubin. He had just received a
11 letter from Director Szubin drawing his attention to a Greek
12 national who had in fact been sanctioned under the secondary
13 sanctions for providing services to Iran's oil industry.

14 Calling that a threat may be a little bit overbroad,
15 but it was certainly, it was certainly a pitch that was high
16 and tight.

17 So this is the context in which Mr. Zarrab has this
18 conversation, and Mr. Zarrab himself testified Mr. Aslan just
19 didn't understand how this was supposed to work.

20 So from all of that evidence, we suggest that the best
21 and the clearest inference to be drawn from this episode is not
22 that Mr. Atilla had any moral or legal reluctance about the
23 fake food trade. He had a security or detection-related
24 concern. And after he received the phone call from Mr. Aslan,
25 which in his trial testimony Mr. Atilla denied ever happened,

1 but the evidence showed that it did, he immediately and without
2 any evidence of any further hesitation worked to improve that
3 method, and to lie to Treasury officials about it.

4 And you can see that including, among other places, in
5 Defense Exhibit 211, and related exhibits which are the e-mails
6 between Mr. Atilla and Mr. Aydogan shortly after that April 10
7 phone call. You can see it in the July 2nd through July 9
8 phone calls between Mr. Atilla and Mr. Aslan and Mr. Zarrab.
9 And you can see it in Mr. Atilla's future communications with
10 the Treasury Department about Halkbank's involvement in the
11 food trade and its relationship with Mr. Zarrab.

12 Mr. Atilla has never claimed that he did this because
13 he was ordered to. He's never claimed that he did it because
14 he had no choice. In fact, Mr. Atilla had an opportunity to
15 explain his conduct, and in more than a day of testimony under
16 oath in this courtroom, he flatly denied that any of it ever
17 happened.

18 Just one last exhibit that we think is significant in
19 evaluating this. We think that is also consistent with another
20 time that Mr. Atilla raised a concern about detection, and that
21 was Government's Exhibit 304-T, which is the phone call
22 discussing Mr. Atilla's warning to Mr. Aslan that the National
23 Iranian Oil Company had transferred funds directly to
24 Mr. Zarrab's bank account. The reason Mr. Atilla raised that
25 is that is a serious detection problem. We know he had no

1 problem with the less direct, less detectable system that was
2 supposed to be followed, for NIOC to transfer the funds first
3 to an Iranian bank and then to Mr. Zarrab. And we submit that
4 is all consistent with Mr. Atilla being neither a cog nor a
5 reluctant participant in this offense.

6 So I'd like now to turn, unless the Court has any
7 questions, to our assessment of the seriousness of the offense,
8 the seriousness and nature of the offense.

9 So, in the government's sentencing submissions, we
10 were again I think pretty candid that it is hard to find a
11 ready comparison for this case or for this offense. And the
12 reason that it is hard to find a comparison is because, to our
13 knowledge, there has not been a bigger criminal sanctions
14 evasion prosecution in a U.S. court than this case. This is
15 the biggest sanctions evasion case prosecuted in the United
16 States that we are aware of. The scope and scale is massive.

17 The context of that offense are U.S. national security
18 controls that were adopted to address a persistent and
19 long-running threat to national security and international
20 security by the government of Iran, and its actions and its
21 policies.

22 There are sanctions that targeted a dangerous regime
23 with globally significant activity, grave human rights
24 violations, a long history of support and funding for foreign
25 terrorist organizations, and acts of terrorism, an illicit

1 ballistics missile program, and an illicit military nuclear
2 program. That, as the U.S. and international community became
3 increasingly aware of and increasingly concerned about,
4 resulted in increasingly targeted sanctions against the
5 government of Iran, its financial and oil sectors, the very
6 sanctions that are in some ways at the heart of this case.

7 This is not a case about drugs, it's not a case about
8 shipments of weapons. But it is, in a very real sense, a case
9 about nuclear capability. Nuclear capability by the world's
10 foremost state sponsor of terrorism.

11 This is activity that happened contemporaneously with
12 the adoption and implementation of those sanctions,
13 contemporaneously with a sustained and coordinated
14 international effort to try and get Iran to stop that military
15 nuclear program.

16 And it undermined those negotiations and those efforts
17 in a way that was both big, monumental in scope, and momentous
18 in timing.

19 And Mr. Atilla was not in the least unaware of those
20 facts. Mr. Atilla was a student of the sanctions from the
21 world's best teachers: The Undersecretary for Terrorism and
22 Financial Intelligence of the U.S. Treasury Department. The
23 director of OFAC. Mr. Atilla was told directly and repeatedly
24 and in person throughout the entire offense conduct what these
25 sanctions were, why they existed, the concerns that the

1 American and international communities had about Iranian
2 sanctions efforts, proliferation efforts, its weapons of mass
3 destruction programs, and he engaged in the conduct anyway.

4 As the Court knows, organized criminal activity is
5 more dangerous and more difficult to root out than individual
6 activity. This was highly organized, highly organized criminal
7 activity involving both Mr. Zarrah and Halkbank, and a number
8 of its senior officers, including Mr. Atilla, and government of
9 Turkey officials, and government of Iran officials.

10 And the victims of that offense, there's no one
11 particular person or group of persons that can be identified to
12 say "these are the victims." I think that in some ways, the
13 most distinguishing factor between some of the other financial
14 crimes cases, the Madoffs and the Dreiers and the cases like
15 that. But that doesn't make the case less serious. In fact,
16 it is because the case is more serious that there is no readily
17 identifiable particular victim. It is so serious that
18 everybody is a victim of it.

19 The gravity of the threat, the fact that it's global
20 in nature, the threat not only of a state sponsor of terrorism
21 having nuclear military weapons, but also the threat of a
22 nuclear arms race in the Middle East, these are threats that
23 face everybody.

24 I think when the Court considers the letters that have
25 been submitted on Mr. Atilla's behalf, the Court clearly has,

1 and clearly should consider those letters. But I think those
2 letters have to be squared with the evidence that was
3 introduced here in this courtroom, evidence that was introduced
4 by live witnesses subject to cross-examination, evidence that
5 was introduced through recordings of conversations, and
6 contemporaneous e-mails.

7 And while in one dimension of his life Mr. Atilla may
8 have exhibited an honesty and an integrity and a commitment to
9 truth, in this offense, for a period of several years, the
10 heart, the heart of his participation, was lying and deception.
11 That is the heart of what he did for more than three years as
12 one of the significant players in this offense. As someone
13 whose participation outlasted every other single person at the
14 bank. It outlasted Mr. Aslan's. It outlasted Mr. Balkan's.
15 It outlasted Mr. Aydogan's. It outlasted everybody else.

16 I suggest that is not an aberration. It is consistent
17 with how Mr. Atilla conducted himself in his post-arrest video,
18 which the Court saw, and it is consistent with how he conducted
19 himself under oath on the witness stand in words that he
20 directed not only to the jury, but also to the Court.

21 And when the rubber hit the road, Mr. Atilla chose
22 lies and deceptions, not honesty and integrity, and I think
23 that is appropriate for the Court to consider in determining
24 the appropriate sentence.

25 So, I'll land on a slightly more technical issue of

1 the guidelines and how they work. So the guidelines, the Court
2 has noted there's a pretty big disparity in how the guidelines
3 can play out, depending on which guidelines provision you rely
4 on. Whether the guidelines are calculated under the first
5 prong of the money laundering guideline or the second prong of
6 the money laundering guideline. But that doesn't show that the
7 guidelines are in any way arbitrary. I think what it shows is
8 that different guidelines measure different things.

9 So in one prong of the money laundering guidelines,
10 looking at the volume of money that was involved in the
11 offense, it adds a dramatically increasing effect on the
12 guidelines calculation. Under another provision, no account
13 whatsoever is given to the volume of money that's in play, and
14 it results in a dramatically lower guidelines calculation.

15 But I think the guidelines recognize that. They
16 recognize that in comment two to guideline section 2M1.5.

17 So, the correctly calculated guidelines, we submit,
18 are based on the second prong of 2S1.1 which does incorporate
19 the volume of funds involved. As a strictly guidelines matter,
20 we think that is correct. And I'll talk about why we didn't
21 recommend a 105-year sentence in a moment.

22 But under the alternate range, based on the sanctions
23 provision, there is no enhancement whatsoever for a lot of
24 aspects of the offense conduct, but comment two recognizes
25 that. And comment two says that a greater sentence may be

1 warranted based on the degree to which the violation threatens
2 security, the volume of commerce, the extent of planning or
3 sophistication, and whether there were multiple occurrences.

4 And your Honor, every single one of those four factors
5 is present to an extreme degree in this case. I've already
6 talked about the national security implications of the offense;
7 the volume of commerce, unparalleled; the extent of planning or
8 sophistication, it was extremely well planned and
9 sophisticated; and it happened persistently and repeatedly over
10 a period of years.

11 So while there is a lower guidelines calculation that
12 results from the alternate calculation, I think the guidelines
13 themselves recognize circumstances under which that may be
14 inappropriately low, and we suggest that all of those are
15 present here.

16 So in the government's view the correctly calculated
17 guidelines calculation, which is the statutory maximum of 105
18 years. There is the alternate calculation --

19 THE COURT: It is actually life, subject to the
20 statutory maximum.

21 MR. LOCKARD: Correct, your Honor. I shorthanded it.
22 Life subject to the statutory maximum. Which, again, is
23 effectively life, given the number of years.

24 There is the alternate guidelines calculation, which,
25 depending on whether the Court applies a minor role adjustment,

1 is the 97 to 121 months, or, as we suggest, 168 to 210, based
2 on our analysis of what the evidence shows about Mr. Atilla's
3 role in the offense.

4 But we did not suggest a 105-year sentence. I think
5 we agreed that effectively a life sentence not only is rarely
6 imposed, but is also inappropriate for Mr. Atilla.

7 And so, we very deliberately and consciously made a
8 recommendation that a sentence comparable to approximately 20
9 years would be both appropriate and supported by comparable
10 cases. That is a significantly below guidelines sentence
11 recommendation. It is about 80 years below guidelines.

12 But we think that a significant sentence is necessary
13 in a case like this where scope of the conduct is unparalleled,
14 the national security implications are grave, the defendant,
15 though not the leader, certainly a person of significance and
16 discretion, and supervisory ability. And given the nature of
17 the threat involved, and the kind of conduct that was engaged
18 in, we think that the sentence should reflect the nature and
19 seriousness of the offense, promote respect for the law, and
20 afford sufficient deterrence for others who might seek to
21 engage in a similar offense.

22 Thank you, your Honor.

23 THE COURT: Thank you. So, I'm then going to adopt
24 the findings of fact in the presentence report, unless defense
25 counsel has any further objections to those already in the

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Sentencing

1 record.

2 MR. ROCCO: No, your Honor.

3 THE COURT: Mr. Atilla, do you have any further
4 objections?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: How about the government?

7 MR. LOCKARD: No, your Honor.

8 THE COURT: Hold on one second.

9 (Pause)

10 THE COURT: So, what I'm going to do at this point is
11 preview the sentence that I intend to impose, and then I'm
12 going to move forward and impose it.

13 So I intend to impose a sentence here of 32 months of
14 incarceration with credit, of course, for time already served.

15 The offense level I've determined is 30, the criminal
16 history category is I, and the appropriate guidelines range is
17 97 to 121 months.

18 On each count of conviction, I intend to impose that
19 same sentence of 32 months and they are to run concurrently.

20 And if the defense is still seeking a recommendation,
21 you can think this over, I would recommend incarceration at a
22 BOP operated non-administrative facility which provides medical
23 care and is near New York City, and you requested specifically
24 FCI Danbury which will facilitate family and Turkish consulate
25 visits, if you want that recommendation.

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Sentencing

1 MR. ROCCO: Yes, your Honor.

2 THE COURT: Okay. I don't intend to impose any
3 supervised release for reasons that I mentioned before and I
4 incorporate here by reference. Nor do I intend to impose a
5 fine for the reasons that I mentioned before and incorporate
6 here by reference. Nor do I intend to impose restitution, also
7 for the reasons I mentioned before in terms of review of the
8 presentence materials.

9 I do intend to impose a \$500 special assessment, which
10 is mandatory under 18, United States Code, Section 3013.

11 And briefly, the reasons for the sentence as I
12 mentioned before, of course, sentence is the most difficult
13 process of a federal court. So I've taken great deal of time
14 and effort, which I'm supposed to do, and determined that the
15 offense level was 30, the criminal history category I. the
16 guideline range that I came up with was 97 to 121 months,
17 making this a lenient sentence.

18 I think it is an appropriate sentence, having reviewed
19 the factors, all of them at 3553(a), and finding that those
20 factors, with the exception of the guidelines range sentence,
21 were more impactful, considering the nature and circumstances
22 of the offense, Mr. Atilla's history and characteristics,
23 reflecting the seriousness of the offense, trying to promote
24 respect for law, provide a just punishment, and afford adequate
25 deterrence to criminal conduct, protecting the public from

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Sentencing

1 further crimes, and providing needed medical treatment,
2 educational or vocational training or other correctional
3 treatment in the most effective manner.

4 So I'm happy to hear from, if they wish to be heard,
5 defense counsel, Mr. Atilla, and the government one more time
6 before I impose that sentence.

7 MR. ROCCO: Your Honor, we have nothing further to
8 say, thank you.

9 THE COURT: Mr. Atilla?

10 THE DEFENDANT: No, your Honor. Thank you very much.

11 THE COURT: And how about the government.

12 MR. LOCKARD: No, your Honor.

13 THE COURT: So I would ask Mr. Atilla and counsel to
14 stand and I will impose the sentence.

15 Having considered the Sentencing Reform Act of 1984,
16 United States sentencing guidelines, and the particularly the
17 factors under 18, United States Code, Section 3553(a), it is my
18 judgment that Mr. Mehmet Hakan Atilla be committed to the
19 custody of the bureau of prisons to be imprisoned for a term of
20 32 months with credit for the time he has already served. And
21 that's on each count of conviction and to run concurrently.

22 And I'm making the recommendation with respect to FCI
23 Danbury that I mentioned a few minutes ago and will include
24 that here.

25 I'm not imposing supervised release for reasons I

1 mentioned before, and incorporate here by reference. I'm not
2 imposing a fine, also for reasons that I mentioned before and
3 the statements in the presentence investigation report. I do
4 not think that restitution is appropriate. So there is no
5 restitution because there is no victim within the meaning of
6 the statute, 18, United States Code, Section 3663 or 3663(a).
7 I am imposing a \$500 special assessment, which is due
8 immediately.

9 And as for the reasons for this sentence, it is a
10 sentence that as best I could reflects all of the factors at
11 3553(a) in the order of significance I found them in this case.
12 And I incorporate that entire discussion from this morning here
13 by reference.

14 Does either counsel know of any legal reason why the
15 sentence should not be imposed as so stated?

16 MR. ROCCO: No, your Honor.

17 MR. LOCKARD: No, your Honor.

18 THE COURT: Then I hereby order the sentence to be
19 imposed as so stated.

20 Mr. Atilla, you have the right to appeal this
21 sentence. If you are unable to pay the costs of an appeal, you
22 have the right to apply for leave to appeal in forma pauperis.
23 If you request, the clerk of court will prepare and file a
24 notice of appeal on your behalf immediately.

25 Do you understand your appeal rights?

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Sentencing

1 THE DEFENDANT: Yes, your Honor. Thank you very much.

2 THE COURT: And at this point is the government
3 seeking to dismiss any open aspects of the case if there are
4 any?

5 MR. LOCKARD: There are none, your Honor. There is an
6 underlying superseding indictment and we ask the Court to
7 dismiss those charges with respect to Mr. Atilla.

8 THE COURT: I grant that application.
9 Starting with the government, did you wish to add
10 anything further to today's sentencing proceeding?

11 MR. LOCKARD: Nothing further, your honor.

12 THE COURT: How about the defense?

13 MR. ROCCO: Nothing further, Judge.

14 THE COURT: I think that then concludes our work for
15 today. Mr. Atilla, I wish you the best of luck going forward.

16 THE DEFENDANT: Thank you, your Honor.

17 THE COURT: We are adjourned.

18 (Adjourned)

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